



MIAMI BEACH

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COMMISSION MEMORANDUM

TO: Mayor David Dermer and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 5, 2007

SUBJECT: **REPORT OF THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE MEETING HELD ON WEDNESDAY, JULY 25, 2007.**

A meeting of the Neighborhoods/Community Affairs Committee was held on Wednesday July 25, 2007 at 2:30 pm in the City Manager's Large Conference Room. Commissioners in attendance: Richard L. Steinberg, Jerry Libbin, Michael Góngora, Saul Gross and Mattie Bower. City staff in attendance: Jorge M. Gonzalez, City Manager; Hilda M. Fernandez, Assistant City Manager; Robert C. Middaugh, Assistant City Manager; Jose Smith, City Attorney; Jean Olin, Deputy City Attorney; Carlos Noriega, Acting Police Chief; Fred Beckmann, Public Works Department Director; Jorge Chartrand, CIP Director; Max Sklar, Cultural Affairs and Tourism Development Director; Gary Held, First Assistant City Attorney; Debora Turner, First Assistant City Attorney; Richard Lorber, Planning and Zoning Manager; Dolores Mejia, Special Projects Manager; Kevin Smith, Parks and Recreation Department Director; Ana Cecilia Velasco, Asset Manager; Officers Alejandro Bello and Bruce Songdahl, Police Department; Robert Reboso, Redevelopment Specialist; John Heffernan and A.C. Weinstein, Office of the Mayor and Commissioners; and Randi MacBride, Neighborhood Services Department.

1. DISCUSSION REGARDING LIGHTS IN PINETREE PARK.

Commissioner Libbin explained that he has been meeting with the members of the Orchard Park Neighborhood Association as well as the members of the Responsible Dog Owners (RDO). He reported that they have reached a consensus not to install lighting but to respect the park hours as they are. Several areas of concern arose from these discussions, including:

- Desire to hide or screen the chain link fence that surrounds the two enclosures in the park with some sort of landscaping.
- Move the K-9 training area elsewhere. (This will not be done.)
- Allow public access to the K-9 training enclosure area when not in use for training. (This would ruin the area for training because of the scents that would be brought in by other dogs)
- There are old tires that may have been used for training purposes in the past however now they are idle and collect water creating a breeding ground for mosquitoes. If the tires are not being used then they should be removed; if they are being used then a different method of storing them should be found to keep them clean and dry.
- The wooden boxes that are used for K-9 training are warped and in disrepair and should be replaced.

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- Many dogs are off-leash in the park outside of the enclosures.
- The residents would like to have the parking lot look as natural as possible by covering the area with something such as wood chips.
- There is a need for enforcement as too many cars park in the parking lot illegally.

Kevin Smith, Parks and Recreation Department Director, stated that he has already received bids for screening the fences. Commissioner Libbin asked if the city can discuss the plant choices with the residents and Gary Hunt before making the purchases and Mr. Smith agreed.

Roby Greer, of the RDO, thanked Commissioner Libbin and the Orchard Park residents. The RDO is in agreement with the City of Miami Beach ordinances as they apply to leashes unless it is in an area that is construed as a dog-friendly area. He believes the off-leash issue in the park is one of education and the RDO suggests that during the time that the city will be looking at the enforcement issue, that there be a grace period including courtesy notices or warning tickets issued to help educate the public.

Commissioner Libbin would like to see the City start enforcing the off-leash ordinance after a period of maybe 30 days and review the possibility of an increasing the fine schedule.

Robert Middaugh stated that with regard to the parking lot, if mulch is put down in the parking area, it is very difficult to maintain and more importantly, it is not consistent with the zoning standards.

Commissioner Gongóra added that he thinks this is more about giving a directive to enforce the parking regulations in the park than reducing the number of spaces.

ACTION: The committee moved to direct the following:

- Kevin Smith is to discuss the shrubbery choices for the screening of the chain link fences in the park with the residents and Mr. Gary Hunt.
- Police should look into cleaning up or removing the tires and replacing the boxes for the K-9 training area.
- Police to handle the education and enforcement of the off-leash law with enforcement to begin by September 1, 2007.
- Staff to determine another mechanism to aide in the collecting of the fines, such as attaching the fines to parking permits issued by the City.

2. DISCUSSION REGARDING LEGISLATION PROPOSED BY LAGORCE NEIGHBORS.

Jean Olin, Deputy City Attorney, opened the discussion by reminding the committee that at the July 11, 2007 Commission meeting, the issue came up regarding an ordinance proposed by LaGorce neighbors that would, in effect, afford them certain view protections to which they claim there are entitled. She provided the background information explaining that there is presently a disagreement between the LaGorce Country Club (Country Club) and the homeowners surrounding the club that arises out of a prior settlement agreement that the City had entered into back in 2003. In this settlement agreement, the Country Club assured the City that it would provide a view to abutting private property owners with regards to its surrounding landscaping. Within that settlement agreement the Country Club was afforded the right to erect a four foot fence which in fact they have done. She continued that the proposed ordinance, included in the agenda and drafted by the homeowners, seeks to define the word "view." The City

Attorney, at the last Commission meeting, opined that this ordinance should not be passed because it seeks to define in a unilateral matter a term that the city is already bound by within the settlement agreement. Ms. Olin stated that earlier this morning, Commissioner Libbin, herself, LaGorce Country Club president Scott Copeland and Joe Serota, who is the attorney for the Country Club, toured the entire perimeter of the golf course. Not only legally is this ordinance not in order, but practically it is not necessary because there does appear to be a view that the Country Club is affording homeowners. Mr. Serota will confirm that the Country Club acknowledged that the height of the landscaping, although not defined in the settlement agreement, is four feet. The Country Club has also said that although the street ends were not agreed to within the terms of the settlement agreement, they will agree to manicure some landscaping even within the street ends to a limit of four feet, but only to a limited degree. She added that what is included in the agenda package is this proposed ordinance which the City Attorney cannot recommend and strongly urges the committee to not consider passage or referral to the Planning Board. Instead, Ms. Olin stated, that the city should continue doing what it is close to doing, which is resolving this issue and working it out.

Commissioner Libbin elaborated on his visits with Mr. Copeland to the Country Club. He stated that Mr. Copeland noted the locations that he specified as being a potential problem. The visit this morning was a follow-up and he feels that the issue is not so much what is today; the issue is the concern about what will be in the future. He feels that unless there is a definitive requirement for the maintenance of the landscape no one will know what is or isn't going to be done in the future. Today, he described that there were very few areas around the interior perimeter that were not either at four feet or below including the street end. Commissioner Libbin continued that the way it was left today is that the Country Club would now go back to their board to have a discussion to determine what they are ready to put on the table as their intent for a landscaping schedule. He noted that Mr. Copeland advised him that in almost every case of the approximately eight locations where there was more than four feet of growth, the resident had requested this to shield their property. Commissioner Libbin suggested that in the case of such an arrangement, it should be in writing. Another concern raised by Commissioner Libbin was the variety of different heights of the fence and he asked that he be provided more information as to what the height of the fence is supposed to be and where.

Mr. Serota stated that the most important thing to show today is the fact that the Country Club is being a good neighbor. He addressed the notion that has been suggested that LaGorce is getting some type of incredible tax break and that the Country Club has some duty to the public because of this tax break. The tax assessor is assessing the Country Club based on its use. Since it is not a residential use, it is taxed at its value to use for open space. There is no tax break. He added that it has also been said that the residents have historical view and that the golf course cannot put a fence around the property. This idea was tried in court several years ago in front of Judge Levinson and the judge stated that LaGorce Country Club is a private property owner and they have the same rights to privacy as do any other property owners. He stated that the Country Club agreed to put up a see-through four foot fence as part of the settlement agreement, even though it has the right to put up a six foot hedge as do other property owners, by law.

Scott Copeland, president of the LaGorce Country Club wanted to point out that the recent trimmings were not a direct result of the meeting a few weeks ago; however it was part of a regularly scheduled maintenance routine. He added that he understood the

height permitted for the fence behind the residences is four feet, while on the street end it is five feet. He will look into the concern that the fence is exceeding the permitted height and he added that he is happy to speak to anyone regarding their concerns with their view or landscaping.

Commissioner Gross commended Mr. Copeland as it seems that the Country Club is trying to be a good neighbor. He suggested, given the history of this issue that it may make more sense to try to keep everything below four feet. He also said there was a feeling that there were some retaliatory actions by the golf course when they put up fences that blocked access to driveways. As these didn't serve the purpose of confining the golf course they just seemed to be done for spite. He wondered if there is something the golf course can do in the spirit of amicability to help resolve that.

Mr. Copeland responded that although he was not involved in the location of the boundary of the golf course perimeter, that is where the fence was placed. He can think of two instances where people's driveways were blocked and one of these has been resolved. In the second case, the golf course has approached this resident and they are not happy with where the property line is. The fence was put on the property line so that everything would be equal. He said he would have to speak with counsel. Commissioner Gross asked Mr. Copeland to do so because this would go a long way to help restore mutual trust. Mr. Copeland agreed to discuss the issue of the location of the fence at the street ends with counsel and with the board.

Kent Harrison Robbins stated that he represents the Miami Beach Citizens Alliance, which is a group of people that own property adjacent to the golf course. He believes there is a need to assure that the public will maintain those views. He believes that although there is a settlement agreement entered into by the city, that settlement agreement was wide open as to the meaning and intent of the views. He added that this is something for the city to work out. He believes there is nothing that prohibits the city from enacting an ordinance.

Jeff Gibbs, a resident on LaGorce, thanked Mr. Copeland for the recent trimming of the hedge behind his house, adding that although the Country Club may have a four-time-per-year schedule, the hedge has never been touched by their maintenance staff or contractors since the fence went up.

Mr. Serota stated that Mr. Robbins is incorrect and that there is no right to public view of private property. Commissioner Gross asked Richard Lorber of the Planning Department if the city counts LaGorce Country Club as open space in our land use map in the comprehensive plan. Mr. Lorber said yes; however, even without the Country Club there is still enough open space to comply with the comprehensive plan.

ACTION: Commissioner Libbin moved to have the board at the LaGorce Country Club meet to discuss the concerns brought up here today and provide a statement to be incorporated into a memorandum of understanding so that the city can assure its residents of the way the view will be treated and return to the next Neighborhoods/Community Affairs Committee meeting.

3. **DISCUSSION REGARDING CITY'S INVOLVEMENT WITH THE INSTALLATION OF AN UNDERWATER ECO FRIENDLY SCULPTURE EAST OF MARJORY STONEMAN DOUGLAS OCEAN BEACH PARK.**

Fred Beckmann, Public Works Department Director stated that he is attending this meeting to ask the committee what role the city is to play in this project.

Ross Powers presented the committee with the information regarding his planned project, "Focus," including its history, design, composition, funding sources, and its potential for eco-tourism.

Commissioner Gross stated that the point of bringing this to the committee was to get together on the permitting issues. Mr. Beckmann asked for confirmation that there would be no cost to the City and stated that the permitting process is very complex. Mr. Powers responded that since he has started this project he has learned that the permit for the existing artificial reef for the South Beach area has expired. He went to the Department of Environmental Resources Management (DERM) to find out what he needed to do and found out there is a different, existing permitted area that he is able, and now intending, to use to submerge "Focus." In order to obtain a permit, a coastal engineer is necessary and that will be a cost. Mr. Beckmann clarified the details and lengthy process involved in permitting and he estimated the cost of the coastal engineer to be approximately \$150,000 to \$200,000. Mr. Powers disagreed, saying that it would be closer to \$15,000 to \$25,000.

Commissioner Bower asked for clarification of the project(s) being discussed. Mr. Powers explained that the "Focus" project will be located 2 miles out, south of Government Cut and a second project that is not yet designed will be placed where a previous reef had been destroyed between 3rd and 5th Streets. Mr. Beckmann said the City cannot sponsor the "Focus" project presented earlier because it is not in Miami Beach. Commissioner Bower confirmed that Mr. Powers is discussing a project for which there is no visual yet, that he would like to create and place where an old reef was destroyed and wants to know that the city will pull the permits.

T. J. Marshall representing "Surfriders" expressed his concern and the concern of his membership for placing a structure south of 5th Street in what is considered as the primary recreation area for surfers. He added that for the permitting process, the county is always the local sponsor for anything offshore; they have to apply to the state. Once they are approved, the Army Corps of Engineers will have to look at it because of the planned beach re-nourishment project. Once the project is submerged, it is the responsibility of the petitioner to maintain, which in this case would be the county and they will put that burden on whoever has asked them to get this permit.

Luiz Rodrigues, Director for the Environmental Coalition of Miami Beach (ECOMB), expressed his view of this potential project and stated that ECOMB is a strong supporter of the project and does not want to place any structure in a place that will impact wave activity.

Commissioner Gross said that if the county is the agency that has to initiate this then maybe this meeting is in the wrong place. Bob Middaugh added that ultimately the issue is going to be whether the city wants to assume any financial responsibility.

ACTION: The committee moved to defer the item until there is an actual project to discuss.

4. DISCUSSION REGARDING PROHIBITING COMMERCIAL BANNERS NORTH OF THE EDEN ROC HOTEL AND SOUTH OF 63RD STREET.

Hilda M. Fernandez, Assistant City Manager introduced the item stating that she and Max Sklar, Tourism and Cultural Development Director are attending this meeting to answer any questions that may arise as to how the light pole banner program works, the specific requirements in the city code in terms of limitations, how the program is run, how it is managed from Tourism and Cultural Development. This matter was brought to the attention of Commissioner Cruz for referral to committee by Mr. Joe Fontana so he may speak of what the issues are and the concerns regarding these banners.

Mr. Joe Fontana explained that the banners are placed on Collins Avenue between 41st Street and 63rd Street for events that are taking place in the County or different parts of the city. He stated that this is not a commercial area, but a highly residential area. The taxpayers that live in these condos are very concerned with where the banners are being placed up and down Collins Avenue. Mr. Fontana continued that they have no objection regarding the placement anywhere else in the city, however they do not want banners of any kind on the light poles on Collins Avenue from 41st Street to 63rd Street. They only want flags or Christmas decorations on the light poles in this area.

Two residents also spoke supporting Mr. Fontana's explanation.

Commissioner Libbin asked Mr. Fontana if any of the condominium boards have taken action or a position either way on this matter.

Mr. Fontana said they have spoken to him voicing their opinions. He explained that according to their by-laws, the president, as he is, has the right to speak for the Condominium Alliance and condominiums at any city event, and city meeting. The people that he has spoken with do not want these banners.

Commissioner Libbin stated he would lean towards going this route but would feel more comfortable in doing so if we had some resolutions from several condominium associations saying they have taken this position that we don't want banners.

Commissioner Steinberg asked for clarification of the banners that are currently allowed. Ms. Fernandez explained that only two types of light pole banners are allowed both of which are under the purview and review process that is done through Tourism and Cultural Development and subsequently signed off by the City Manager's office. The city does not permit commercial marketing, advertising banners, but does permit special event banners either occurring in the city or outside the city as there are some reciprocal programs for banners of public institutions or districts. The public institutions or districts include banner signs for the Bass Museum, the Wolfsonian, for the Arts district, and CANDO. The city's new way-finding program has established guidelines for how neighborhood identification banners can look. Ms. Fernandez believes that Mr. Fontana is referring to banners used to promote special events in our city. These could be for the Boat Show, Art Basel, or the Car Show which are all time limited. Commissioner Libbin said that since the city has become such a busy place, there seems to be more special events so there are more banners.

Ms. Fernandez agreed, however she pointed out that these are not commercial banners in the sense that McDonald's can't pay to put an "Eat at McDonald's" banner on the pole.

Commissioner Gongóra said he lives in the middle of the district as well and he has spoken to several neighbors and finds that people do not like the banners in general.

Commissioner Gross asked if limiting the banners might be an answer. Mr. Fontana stated he didn't think that would work. Commissioner Steinberg said this can be discussed at Commission.

Commissioner Steinberg said the city is going to start charging soon so there will probably be a decrease in the banners anyway.

ACTION: Commissioner Gongora moved to bring to this item to the Commission level, provide adequate notice to the condos in the area to address this as a whole and suggested that Mr. Fontana get the boards of the condominium buildings to pass a resolution to bring to the commission meeting in September.

5. DISCUSSION REGARDING THE PROGRESS OF THE NORTH-END POLICE SUB STATION.

Bob Middaugh, Assistant City Manager introduced the item and stated that the City Manager and Acting Police Chief Noriega have worked out a solution for the North end police substation. Chief Noriega added that they are ready to open the doors.

Commissioner Libbin expressed his gratitude to both the City Manager and Chief Noriega as this has been a sore subject with the residents in North Beach for a long time. There was much concern as to whether the intent was to ever reinstate the station.

Chief Noriega added that all services that were available previously will again be available.

ACTION: No action was taken.

JMG/HMF/rfm